# STATE OF MICHIGAN

# COURT OF APPEALS

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CRAIG BLACK, Personal Representative of the ESTATE OF VERSIA LEE BLACK, Deceased,

Plaintiff-Appellant,

v

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN, as operators of the UNIVERSITY OF MICHIGAN HOSPITAL, an agency of the State of Michigan,

Defendant-Appellee.

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UNPUBLISHED
May 9, 1997

No. 186733
Washtenaw Circuit Court
LC No. 92-14200-CM

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Plaintiff Craig Black, as the personal representative of the estate of Versia Lee Black, appeals by right from the trial court's findings of fact and no cause verdict in favor of defendant Board of Regents of the University of Michigan Hospital, as operators of the University of Michigan Hospital. We affirm.

I

Plaintiff argues that the trial court erred in denying his motion to disqualify Judge Wilder. We conclude that plaintiff waived this issue.

According to the court rule, if the judge denies the motion for disqualification, then the moving party may pursue the matter further by request to the chief judge for de novo consideration. MCR 2.003(C)(3). Plaintiff failed to do this, and such failure constitutes a waiver of the issue on appeal. *Law Offices of Lawrence J Stockler v Rose*, 174 Mich App 14, 23; 436 NW2d 70 (1989). See also *People v Williams (Aft Rem)*, 198 Mich App 537, 544; 499 NW2d 404 (1993).

II

Plaintiff next argues that the trial court abused its discretion in denying his motion to add Dr. Cox as an expert witness. We disagree.

We review a trial court's denial of a party's motion to supplement a witness list for abuse of discretion. *Levinson v Sklar*, 181 Mich App 693, 699; 449 NW2d 682 (1989).

Witness lists are part of the discovery process. *Stepp v Dep't of Natural Resources*, 157 Mich App 774, 778; 404 NW2d 665 (1987). The goal of discovery is to prevent surprise by making available all relevant facts prior to trial. *Id*. In this way, the possibility of settlement is enhanced, and trial by ambush prevented. *Id*. In ruling on a motion to amend a witness list, the trial court should consider the length of and the reason for the moving party's delay and the prejudice caused to the nonmoving party. *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).

We find that the trial court properly denied plaintiff's motion where, at the motion hearing, plaintiff admitted that Dr. Cox's testimony would be simply redundant and cumulative of Dr. Repsher's. Plaintiff also admitted in his appeal brief to this Court that on March 4, 1994, he first learned that Dr. Cox had reviewed the slides. However, plaintiff waited in excess of six weeks before moving to amend his expert witness list. This fact coupled with plaintiff's admission that he knew "[f]or quite some time" that defendant had three pathologists in tow strongly supports the court's conclusion that plaintiff's motion was untimely. Moreover, while plaintiff offered that defendant would be entitled to depose Dr. Cox to prevent unfair surprise, such an offer was untenable when trial was scheduled to begin three business days later and where Dr. Cox was located in Colorado.

III

Plaintiff next argues that the trial court's findings are clearly erroneous. We disagree.

We will not disturb a trial court's findings of fact unless they are clearly erroneous. *Poirier v Grand Blanc Twp (Aft Rem)*, 192 Mich App 539, 548; 481 NW2d 762 (1992). Findings of fact are not clearly erroneous unless, after reviewing the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id*. This standard does not authorize the reviewing court to substitute its judgment for that of the trial court, whose findings must be left alone so long as they are plausible. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

We find that the evidence supports the trial court's findings. Drs. Gluck, Owens, Friedman, Flint, and Abrehms all testified consistently that defendant did not breach the standard of care. While all of these witnesses are board-certified, plaintiff's primary expert, Repsher, is not board-certified. Finally, credibility is an issue for the fact-finder, *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991), and the trial court gave an entire litany of reasons for finding Repsher incredible, including being purposefully evasive at deposition in order to frustrate discovery, changing his testimony from that given earlier in deposition, and shedding false tears at trial.

It is true that the trial court mistakenly found that defendant began, and later discontinued, Heparin treatment on February 9, 1991, and that the VQ scan also occurred on that date when, in fact,

those events transpired on February 10, 1991. However, we find that the trial court understood what was important, namely the *sequence* of events as opposed to whether those events happened to occur before or after midnight on February 9, 1991.

Affirmed.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell